

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6851 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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UNION OF INDIA

Versus

GANGESHWARPRASAD B SINGH

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Appearance:

MR JAYANT PATEL for Petitioners

MR PH PATHAK for respondents

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 29/08/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

1. Rule. Mr. P.H. Pathak, learned advocate appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.
2. This petition is filed by the petitioners against interim orders passed by the Central Administrative

Tribunal ('CAT' for short) on August 17, 1998 and on October 1, 1997 in M.A. St. No. 397 of 1998 in M.A. No. 534 of 1998 in O.A.No.583 of 1997.

3. Respondents are the original applicants before CAT. They filed OA No. 583 of 1997 for the grant of benefits to the applicants in accordance with law by regularising their services and by paying wages on that basis with 18% interest. Interim relief was also prayed. The said application was filed on 25.9.1997. On October 1, 1997, ex-parte interim relief came to be granted by CAT which reads as under:

"Heard Mr. Pathak. Issue notice. As an interim measure respondents are restrained from terminating the services of the applicants if they are actually engaged till 30.9.97 till the next date. Direct Service permitted to both the Respondents.

Adjourned to 13.10.97."

Mr. Pathak stated that the opponent-authorities were served with the said order and thereafter the matter was adjourned from time to time.

4. It appears that the authorities were of the view that since before the order was passed by CAT and was served upon them, services of the applicants were already terminated and as no mandatory direction was issued, the applicants could not be permitted to resume. They, therefore, did not allow the applicants to work. Sufficient period elapsed for which some explanation was made by Mr. Patel, learned counsel for the petitioners. We are, however, not expressing any opinion on that aspect as the matter is pending before CAT.

5. In June 1998, MA St. No. 397 of 1998 came to be filed by the authorities, inter alia, praying therein to modify the order dated October 1, 1997 by revoking or cancelling interim order as the same could not be implemented for the reasons mentioned in the said application. An order was passed by CAT on that application on July 9, 1998 which reads as under:

"Mrs. Safaya prays for a short adjournment to remove office objection on M.A.St.397/98.

Adjourned to 20.07.98.

Mr. Pathak says that the respondents may be directed to implement the interim order dated 01.10.97 to the effect that if the applicants were actually engaged on 30.09.97 their services

shall not be terminated. It will be taken up on the next date."

Thus, CAT reiterated what was stated in the first order dated October 1, 1997. Thereafter the main matter appeared on Board on July 22, 1998 and CAT passed an order stating that interim direction restraining the opponent authorities from terminating services of the applicants if they were actually engaged till September 30, 1997 was passed. CAT also noted the grievance made by Mr. Pathak, learned counsel for the applicants, that said directions have not been complied with. CAT also indicated in the said order that Mrs. Safaya appeared on behalf of the authorities and stated that though applicant No.4 was continued in service, other applicants were not in service. Some of them were served with termination notice and in other cases, on their refusal to receive notice, same was duly pasted on September 30, 1997. It was further stated that applicant No.3, Jasmuddin Ansari, has already received notice and accepted the amount of retrenchment compensation. CAT also observed that though interim orders were passed on October 1, 1997, till July 22, 1998, M.A. seeking modification of the interim order had not been registered as it was under objections. The Tribunal, therefore, observed:

"There is some controversy about applicant No.3 about receipt of retrenchment compensation. We direct that in respect of other three applicants, namely, (1) Gangeshwarprasad B. Singh (2) Mr. Brahmdev Tiwari and Number (5) Rameshbhai M. Panara the department shall implement our interim orders without any further delay. The question of applicant No.3, Jasmuddin Ansari will be taken subsequently. These directions should be complied with within two weeks. This is without prejudice to the contentions raised by the applicants and the respondents in the main O.A."

6. The matter was thereafter adjourned to 6.8.1998. Meanwhile, the authorities filed application being MA No.534 of 1998 on August 11, 1998. In paragraph 4 the authorities stated:

"That the applicant thereafter filed M.A.St.No. 397/1998 for the modification of the order dtd.1.10.1997. The same is pending for disposal. On 22.7.1998 the Hon'ble Tribunal has directed the department to implement the interim order

without any further delay and further directed to comply within the stipulated period extended upto 31.8.1998."

CAT, after hearing the parties, passed following order on August 17, 1998 which is also impugned in the present petition:

"Heard Mrs. Safaya on MA 534/98, a copy of which has been given to Mr. Pathak. She submits that the Department had understood our interim order dated 1.10.97 to mean that if orders terminating their services have not been issued, they should be continued and as such orders had been issued and in the absence of any direction to take them back, they were not taken back. The intention of the Tribunal was that if they were serving on 30.9.97, they should be continued in service and if their services have been terminated, they shall be taken back. We accordingly direct that so far as the three applicants namely (1) Gangeshwar Prasad B. Singh (2) Brahmdev Tiwari and (3) Rameshbhai M. Panara are concerned, the Department shall implement our interim order and take them back in service if their services had not been terminated prior to 30.9.97. MA/534/98 is disposed of as above call on 31.08,.98. A copy of the order may be given to Mrs. Safaya."

7. We have heard Mr. Patel, learned counsel for the petitioners and Mr. Pathak, learned counsel for the respondents. Mr. Patel submitted that the orders passed by CAT were contrary to law, without jurisdiction and could not have been passed. According to him, the first order which was passed on October 1, 1997 could not have been passed as it was passed ex-parte without hearing the other side. Before the order was passed, services of all the applicants came to be terminated from September 30, 1997. As the said fact was not brought to the notice of the Tribunal, CAT passed the order which was prohibitory in nature. According to Mr. Patel, from reading of the order itself, it is clear that a mandatory direction was not given by CAT. He further submitted that as there was no mandatory direction, the authorities had not taken the employees back in service. An application was made before CAT for modification of the order. As there was no mandatory order, the authorities had not committed any error and/or flouted the direction. It requested CAT to hear the matter on merits and to vacate interim relief granted earlier. He further submitted that clarification order was made for the first time by CAT on August 17,

1998 in which positive and mandatory direction was issued to implement the order. As the order is illegal, the authorities approached this Court. He, therefore, submitted that the petition deserves to be allowed by vacating and/or quashing and setting aside the order passed by CAT by directing CAT to hear the matter on merits.

8. Mr. Pathak, learned counsel for the respondents, on the other hand, supported the order passed by CAT. He raised a preliminary objection that the petition is under Article 227 of the Constitution and jurisdiction of this Court is very much limited. On merits, he submitted that the action of the authorities was wrong in law. When discretion was exercised by CAT in granting reliefs, it was not open to the authorities to ignore the order passed by CAT and to sit tight over the orders. No contention was raised for quite a long time that the order was not mandatory. At a belated stage, a grievance was made that such order could not have been passed. According to him, nobody prevented the authorities either from approaching this Court or from getting necessary clarification or modification from CAT when initially, the order was served and the authorities came to know about it in the beginning of October, 1997.

9. Looking to the facts, it clearly appears that initially CAT granted relief by which authorities were restrained from terminating services of the applicants if they were actually engaged till September 30, 1997. It was the case of the authorities that the services of the applicants came to be terminated and necessary orders were passed. Some of the applicants were served with orders and those who refused service, the notices were pasted. According to the authorities, the day on which the order was passed by CAT, except applicant No.4 (in respect of whom a statement was made by Mrs. Safaya before CAT at subsequent hearing), no other applicant was in actual service. It is true that for about eight months no application for modification and/or clarification was made by the authorities before CAT. But it is equally true that though the applicants/employees were not permitted to work, they also did not file any application for appropriate mandatory relief. No doubt, Mr. Pathak stated that interim relief was granted, the authorities appeared and after hearing the authorities the matter was adjourned on various occasions. The authorities, however, made no grievance against interim relief and for the first time, an application was filed in June, 1998 which was also pending under some office objections. But it also cannot

be forgotten that at none of the occasions, even the applicants had made any grievance before CAT by filing application for getting appropriate direction, mandatory in nature, that though an order was passed, which according to the applicants, was very clear but the said order had not been complied with. Mr. Pathak stated that no formal application was made but oral request was made by him before CAT that the authorities had not implemented the order and the applicants were not allowed to resume duty, and hence, appropriate directions may be issued.

9. The fact remains that for the first time, on August 17, 1998, CAT clearly, explicitly and unambiguously directed that the order should be implemented by the authorities. No doubt, the said order is the subject matter of challenge. But it is an interim order. If in the light of the facts and circumstances, CAT has passed interim order and though we are satisfied that a Special Civil Application is maintainable, as in our opinion, the petition against the order passed by CAT would be under Articles 226/227 of the Constitution as observed by a Larger Bench of the Honourable Supreme Court in L. Chandra Kumar v. Union of India, AIR 1997 SC 1125 (para 91), no interference is called for.

10. Ultimately this is an interim order and unless it has resulted into miscarriage of justice, this Court may not interfere with the same. The interim order was passed as early as on October 1, 1997, and CAT directed compliance of the said order by an order dated August 17, 1998. By that order, the intention of CAT was made clear and direction was issued that the employee (other than applicant No.4) be taken back in service. We do not think that the said order could not have been passed. Hence so far as that part of the order is concerned, we see no reason to interfere with the same. Accordingly, the direction to take back three applicants in service as mentioned in the order dated August 17, 1998, is not disturbed.

11. So far as the intervening period and payment of wages is concerned, we are not passing any order at this stage as the main matter is pending. Subject to all contentions available to respective parties, as and when the matter will be decided by CAT, it will pass appropriate order at the time of final hearing on that question. Rule is accordingly made absolute to the above extent. In the facts and circumstances, no order as to costs.

12. Learned counsel for the petitioners prays that direction to comply with the order passed by CAT by 31.8.1998, which fact the authorities have stated in paragraph 4 of the MA No.534 of 1997, may be extended for few days so as to enable the authorities to take appropriate action and/or to comply with the order. Mr. Pathak objects. He states that the direction was issued by CAT as early as on July 22, 1998 and hence no further time need be granted. He further submitted that even if such time is granted, all benefits must be given to the applicants with effect from the date of the order which was passed on 22.7.1998. In our opinion, however, the request of the petitioners is reasonable. CAT has granted time upto 31.8.1998 and we are disposing of the matter today on 29.8.1998. Tomorrow would be Sunday and it would be proper if we grant time upto 5.9.1998.

13. CAT will give due priority to this case and decide the same in accordance with law, without being influenced by the interim orders passed by it or the observations made by this Court in this orders.

14. Liberty to apply in case of difficulty.

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